IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NOS. 24455 OF 2000; 11442; 11599; 11834; 11950; 11951 AND 11952 OF 2001

WRIT PETITION NO : 24455 of 2000

Between:

M/s. Loknath Prasad Gupta, Manufacturer of Raja Khaini,

R.K.Devpath Post, Titagarh, West Bengal, rep. by its Proprietor, Mr. Loknath Prasad Gupta.

..... PETITIONER

AND

1. The Assistant Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
2. The Deputy Commercial Tax Officer, Ichapuram, Srikakulam District.
3. The Branch Manager, State Bank of Bikaner and Jaipur, Vivekananda Road Branch, 206/1F, Bidan Sarani, Calcutta - 700 006.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the communication of the 1st Respondent dated 4/5-12-2000 as illegal, arbitrary and high-handed and consequently declare that petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax on Luxuries Act, 1987 pursuant to

the impugned communication dated 4/5-12-2000 of the 1st Respondent.

For the Petitioner: Mr.P.Srinivasa Reddy, Advocate.

For the Respondents: SPL GP FOR TAXES.

WRIT PETITION NO : 11442 of 2001

Between:

M.V. Satish, S/o. Dharma Rao, Door No-4-46/A,
Adityanagar Colony, Aarasivili , Srikakulam - 532401.

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer, Integrated Check Post,
Purushothampuram, Srikakulam District.
2 The Deputy Commercial Tax Officer, Integrated Check Post,
Purushothampuram, Srikakulam District.
3 Loknath Prasad Gupta, R.K. Devpath,
P.O. Titagarh - 743188, West Bengal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the assessment order dated 1-11-2000 and consequential penalty order dated 10-11-2000 passed by the 2nd Respondent under the Andhra Pradesh Tax on Luxuries Act, 1987 as illegal and without jurisdiction and in gross violation of principles of natural justice and consequently declare that the petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax on Luxuries Act, 1987.

For the Petitioner: Mr. A.Sarveswar Rao, Advocate.

For the Respondents: SPL GP FOR TAXES

WRIT PETITION NO : 11599 of 2001

Between:

M. Srinivasa Rao, S/o. M. Ramu,
Beta Veedhi, Santa Market, Vizianagaram – 535 001.

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer, Integrated Check Post,
Purushothampuram, Srikakulam District.

2 The Deputy Commercial Tax Officer, Integrated Check Post,
Purushothampuram, Srikakulam District.
3 Loknath Prasad Gupta, R.K.Devpath,
P.O.Titagarh - 743188, West Bengal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the assessment order dated 1-11-2000 and consequently penalty order dated 10-11-2000 passed by the 2nd Respondent under the Andhra Pradesh Tax on Luxuries Act, 1987 as illegal and without jurisdiction and in gross violation of principles of natural justice and consequently declare that the petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax on Luxuries Act, 1987.

For the Petitioner: Mr.A.Sarveswar Rao, Advocate.

For the Respondents: SPL GP FOR TAXES

WRIT PETITION NO : 11834 of 2001

Between:

S. Satynarayana S/o late Rambabu,
H.No.6, 11 Narayan Street, 7 Wells, Chennai – 600 001

..... PETITIONER

AND

1 The Asst. Commercial Tax Officer, Integrated Check Post,
Purushothampuram, Srikakulam District.
2 The Deputy Commercial Tax Officer, Integrated Check Post,
Purushothampuram, Srikakulam District.
3 Loknath Prasad Gupta, R.K. Devpath,
P.O.Titagarh-743 188, West Bengal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the assessment and penalty order purported to have been passed by the 2nd Respondent as per communication of 1st Respondent in Rc.No.134/2000/C, dt: 4-12-2000 as illegal, arbitrary and without jurisdiction and in gross violation of principles of natural justice and consequently declare that the petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax un Luxuries Act, 1987 and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

For the Petitioner: Mr.A.Sarveswar Rao, Advocate.

For the Respondents: SPL GP FOR TAXES.

WRIT PETITION NO : 11950 of 2001

Between:

M. Krishna, S/o. Late Satyanarayana,

18-6-3/2, Vakkalaka Street,
Near Kaspa High School, Vizianagaram – 535 002.

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
2 The Deputy Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
3 Loknath Prasad Gupta, R.K. Devpath, P.O. Titagarh –743 188, West Bengal .

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the assessment order purported to have been passed and consequently penalty order dated 10-11-2000 passed by the 2nd Respondent under the Andhra Pradesh Tax on Luxuries Act, 1987 as illegal and without jurisdiction and in gross violation of principles of natural justice and consequently declare that the Petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax on Luxuries Act, 1987.

For the Petitioner: Mr.A.Sarveswar Rao, Advocate.

For the Respondents: SPL GP FOR TAXES.

WRIT PETITION NO : 11951 of 2001

Between:

B. Naga Babu, Prop. M/s. Vasavi Tirumala Kirana &

General Stores, Door No. 47-1-67, 6th Lane, Dwarakanagar,
Visakhapatnam .

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
2 The Deputy Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
3 Loknath Prasad Gupta, R.K.Devpath, P.O. Titagarh – 743 188 West Bengal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the assessment order purported to have been passed and consequently penalty order dated 10-11-2000 passed by the 2nd Respondent under the Andhra Pradesh Tax on luxuries Act, 1987 as illegal and without jurisdiction and in gross violating of principles of natural justice and consequently declare that the Petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax on Luxuries Act, 1987.

For the Petitioner: Mr.A.Sarveswar Rao, Advocate.

For the Respondents: SPL GP FOR TAXES.

WRIT PETITION NO : 11952 of 2001

Between:

N.V.R. Murthy, S/o. N.S.S.N. Murthy, 1-3-34, 3rd Street, Gandhinagar, Anakapalle, Visakhapatnam District.

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
2 The Deputy Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
3 Loknath Prasad Gupta, R.K.Devpath, P.O. Titagarh – 743 188,

West Bengal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the assessment order purported to have been passed and consequential penalty order dated 10-11-2000 passed by the 2nd Respondent under the Andhra Pradesh Tax on Luxuries Act, 1987 as illegal and without jurisdiction and in gross violation of principles or natural justice and consequently declare that the Petitioner is not liable to pay any luxury tax under the Andhra Pradesh Tax on Luxuries Act, 1987.

For the Petitioner: Mr.A.Sarveswar Rao, Advocate.

For the Respondents: SPL GP FOR TAXES.

The Court made the following:

COMMON ORDER: (per Sri B. Sudershan Reddy, J)

Notwithstanding the objections raised by the learned Standing Counsel appearing on behalf of the Department, the subject matter that arises for consideration in these writ petitions is squarely covered by the decision rendered by the Supreme Court in ***GODFREY PHILLIPS INDIA LTD v. STATE OF UP***. In our considered opinion, the question of respondents proceeding against the petitioners in whatever manner for realization and collection of the luxury tax imposed under the provisions of the Andhra Pradesh Tax on Luxuries Act, 1987 does not arise since the Act is declared as unconstitutional. Whether the writ petitions are filed by the consignors or the consignees and whether the assessment order is questioned or not, in substance would not make any difference since the Act itself is held as unconstitutional by the Supreme Court.

The respondents, however, are entitled for the benefit of the observations made by the Supreme Court in paragraphs 97 and 98 of the said judgment.

For the aforesaid reasons, the writ petitions are allowed in terms of the judgment of the Supreme Court referred to hereinabove.

The bank guarantees furnished by the petitioners in W.P No. 24455 of 2000 is required to be returned to them and the same is accordingly directed to be returned.

(B. Sudershan Reddy, J)

20-04-2005

(C.V. Ramulu, J)

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That Rule nisi has been made absolute as above. Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday, the twentieth day of April, Two Thousand and Five.

ASSISTANT REGISTRAR

To

1. The Assistant Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.
2. The Deputy Commercial Tax Officer, Ichapuram, Srikakulam District.
3. The Branch Manager, State Bank of Bikaner and Jaipur, Vivekananda Road Branch, 206/1F, Bidan Sarani, Calcutta - 700 006.
4. Two CCs to the Special Government Pleader for Taxes, High Court of Andhra Pradesh, Hyderabad (OUT).
5. Two CD copies.
6. The Deputy Commercial Tax Officer, Integrated Check Post, Purushothampuram, Srikakulam District.